

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF CINCINNATI BELL TELEPHONE)	
COMPANY FOR EXEMPTION OF VOICE)	CASE NO. 93-008
MESSAGING SERVICE FROM REGULATION)	

O R D E R

On January 4, 1993, Cincinnati Bell Telephone Company ("CBT") filed a petition requesting exemption of its AnswerLink Voice Mail and AnswerLink Basic Service ("AnswerLink") voice message services. On January 12, 1993, Advanced Telecommunications Corporation filed a request for full intervention, which was granted by the Commission. Information requests were issued by the Commission on March 12, 1993 and April 12, 1993 and responses were filed by CBT. A public hearing was held on September 2, 1993 and, on September 17, 1993, CBT filed responses to questions arising from the hearing. On September 29, 1993, an informal conference was held for the purpose of discussing the post hearing responses.

BACKGROUND

On August 1, 1991, the Commission initiated Administrative Case No. 338¹ to investigate the provision of enhanced services within the Commonwealth. In its Order, the Commission adopted the Federal Communications Commission's ("FCC") definition of "enhanced services" set forth in 47 C.F.R. Sec. 64.702(a). The FCC

¹ Administrative Case No. 338, Inquiry Into The Provision of Enhanced Services in Kentucky.

distinguished enhanced services from basic services by their functional characteristics.

The FCC's enhanced service definition refers to three service classes: "services, offered over common carrier transmission facilities that . . . (1) Employ computer processing applications that act on the format, content, code, protocol, or similar aspects of subscriber's transmitted information; (2) Provide the subscriber with additional, different, or restructured information; (3) Involve subscriber interaction with stored information."²

DISCUSSION

CBT's AnswerLink services are voice mail services which allow customers to receive, manage, and retrieve telephone messages from callers. Messages may be retrieved either on site or from remote locations. CBT identified several tariffed services which must be purchased in association with AnswerLink for it to function properly.³ CBT uses the following services to provide AnswerLink: Exchange Access Lines, Multi-line Hunt Groups, SMDI, DID Trunks, Call Forwarding Busy, Call Forwarding No Answer, and Message Waiting Indication. Touchtone is not necessary if the subscriber has a dual tone multifrequency format tone capable telephone. Subscribers with Call Waiting are not encouraged to purchase Call Forwarding Busy. With the exception of exchange access lines, all

² 47 C.F.R. Sec. 64.702(a).

³ Items 2, 7, and 8 in CBT response filed March 12, 1993.

of these network services are individually priced and require service-specific cost and demand studies.

In evaluating CBT's petition for regulatory exemption of its AnswerLink services, the Commission is bound by KRS 278.512 and 278.514. The Commission may exempt telecommunications services and products or may reduce regulation if it determines that exemption or alternative regulation is in the public interest. KRS 278.512 identifies eight criteria to be considered by the Commission when making this determination and permits consideration of any other factor deemed in the public interest.

Three criteria focus on the existing conditions of the market. The Commission is to consider the extent to which competing telecommunications services are available in the relevant market, the existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available, and the number and size of competitive providers.

CBT identified several alternatives to AnswerLink.⁴ Various equipment vendors currently offer private branch exchanges ("PBXs") with voice mail capabilities. CBT competes directly with GTE South Incorporated's and South Central Bell Telephone Company's respective voice message services. CBT lists eight competing message and voice message companies in Northern Kentucky. Retail and discount outlets, such as Sears, Circuit City, and Service Merchandise, offer answering machines with capabilities similar to

⁴ Exhibit 1 dated January 7, 1993, Petition at 2, and Item 5(b) in CBT's information response dated March 12, 1993.

AnswerLink. Interexchange carriers such as AT&T, MCI, and Sprint, also offer competing voice mail services.

The overall impact of the proposed regulatory change on the availability of existing services at reasonable rates was also considered by the Commission. In CBT's view, AnswerLink, to date, has been offered on an unregulated basis and is subject to substantial competition, which eliminates the need for regulation.⁵ To the extent that tariffed network services are used with AnswerLink, AnswerLink stimulates usage of the regulated network and contributes revenues toward CBT's joint and common costs. The competitive nature of the voice message market, regulated network stimulation and existing cost allocation regulations protect tariffed network services. CBT's provision of existing network services at reasonable rates is not endangered by the exemption of AnswerLink.

The Commission fully considered whether adequate safeguards exist to assure that rates for regulated services do not subsidize exempt services. There are two possible methods by which exempt services could be subsidized by tariffed network services: (1) insufficient expenses and capital costs could be allocated to exempted services relative to tariffed network services and (2) tariffed network services could be priced below some optimal level.

There are several existing safeguards that protect Kentucky ratepayers against subsidization. CBT only mentioned its Cost Allocation Manual ("CAM"), which describes how CBT complies with

⁵ Petition at 3.

the cost allocation rules of Part 64, as an effective safeguard.⁶ However, there are additional safeguards, including the FCC's Joint Cost and Affiliated Transaction Accounting Rules (Part 32 and Part 64 of the FCC's Rules and Regulations); the annual independent third party audit, which assures compliance with Parts 32 and 64; the annual Form M reporting requirements; and the quarterly and annual Automated Reporting and Information System reporting requirements.

When a regulated service is initially offered, a study is filed in conjunction with the tariff sheets which compiles and lists the various costs involved in providing the service, as well as estimated demand and revenue figures. The forecasts may be for as long as five years. Subject to Commission review, the tariffs may be updated at any time in response to changing cost and market conditions. It is possible for tariffed network services to be incorrectly priced when market conditions change relative to demand and revenue forecasts.

CBT stated that it monitors market conditions relevant to each of its services and that monitoring is an ongoing process. There is a product manager for each CBT service. Product managers have a variety of tools, including market studies, which can be used to monitor specific service markets. Product revenues and costs are formally reviewed on a semiannual and annual basis. Cost studies, subject to Commission review, are filed with each tariffed service.

⁶ Petition at 3.

The Commission has the opportunity to review pricing methodology and specific pricing parameters at the time a rate case is filed.⁷

The safeguards inherent in the FCC's guidelines, along with federal and state monitoring policies, should be adequate to assure that expenses and investments are being properly allocated between regulated and non-regulated services. However, there is not a coordinated systematic effort to keep the Commission apprised of specific market changes or market evaluation results between rate cases. To assure that optimal revenue streams are being captured by tariffed network services utilized by exempt services, CBT should update the demand and revenue forecasts which form the basis of its tariffed prices. Updating forecasts may not necessarily require new marketing surveys, as long as it can be demonstrated that actual demand and revenues do not deviate significantly from the most recent forecasts for the services in question. Updated forecasts should be filed with the Commission at least every three years, either reaffirming an existing tariff or justifying a tariff change. Where a tariff change is warranted, the Commission does not contemplate that CBT will have to produce new cost support. CBT may file for a waiver of this requirement for regulated services generating de minimis revenues.

The Commission has considered the impact that exempting AnswerLink will have upon universal service. CBT contends that the federal and state accounting guidelines, and reporting and

⁷ Informal conference memorandum to the main case file dated October 1, 1993.

monitoring procedures adequately protect universal service goals. To date AnswerLink has been offered on an unregulated basis and has not put upward pressure on local exchange access rates. Federal and state accounting guidelines, CBT's CAM and independent agency audits assure that common and joint costs are properly allocated between CBT's regulated and unregulated businesses. Given these accounting safeguards, state monitoring as described herein, and lack of upward pressure on local exchange access rates, exempting CBT's AnswerLink service will not endanger the pursuit of universal service goals at reasonable rates.

Conversely, regulation of CBT's AnswerLink service may actually hamper CBT's ability to compete in a competitive market environment. There are many competitors in the voice mail market, either offering competing services or customer premises equipment with voice mail capabilities. Within the specific context of this proceeding, the Commission finds that CBT does not exercise significant market power in Kentucky's voice mail market.

The competitive nature of the voice mail market should provide adequate safeguards to protect customers from unfair treatment, poor service quality, or excessive prices. However, all customers are encouraged to exercise their option of filing complaints regarding the exempt services with the company and the Commission if deemed necessary.

Although CBT's investment, revenues and expenses associated with enhanced services will not be considered by the Commission in determining rates for CBT's services, the Commission retains

jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514. CBT shall continue to fulfill all reporting requirements of KRS Chapter 278 and Commission Orders.

The Commission has carefully reviewed CBT's petition in accordance with the criteria contained in KRS 278.512 and finds that exemption of CBT's AnswerLink service, as described in this proceeding, is in the public interest.

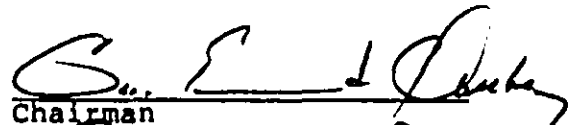
IT IS THEREFORE ORDERED that:

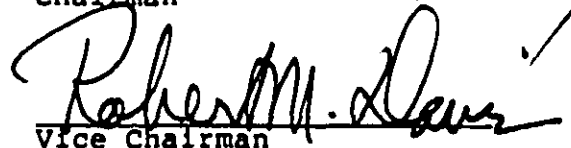
1. The enhanced services specifically described in CBT's petition are exempted from regulation, pursuant to KRS 278.512 and KRS 278.514.

2. Within 90 days of the date of this Order and every three years thereafter, CBT shall file updated demand and revenue forecasts and new tariff sheets as necessary for the following services used to provide AnswerLink including: Multi-line Hunt Groups, SMDI, DID Trunks, Call Forwarding Busy, Call Forwarding No Answer, and Message Waiting Indication.

Done at Frankfort, Kentucky, this 23rd day of November, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner